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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 JERRY RAY CAVINS,

No. 2:03-cv-00929-MCE-KJM P

12 Petitioner,

13 vs.

ORDER

14 MELVIN HUNTER, et al.,

15 Respondents.
16 _____/

17 Petitioner has timely filed a notice of appeal of this
18 court's March 31, 2009 dismissal of his application for a writ of
19 habeas corpus. Before petitioner can appeal this decision, a
20 certificate of appealability must issue. 28 U.S.C. § 2253(c);
21 Fed. R. App. P. 22(b).

22 A certificate of appealability may issue under 28 U.S.C.
23 § 2253 "only if the applicant has made a substantial showing of
24 the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

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1 When, as in this case, the district court denies a habeas
2 petition on procedural grounds without reaching the prisoner's
3 underlying constitutional claim, a certificate of appealability
4 should issue when the prisoner shows that jurists of reason would
5 find it debatable whether the petition states a valid claim of
6 the denial of a constitutional right and that jurists of reason
7 would find it debatable whether the district court was correct in
8 its procedural ruling. Slack v. McDaniel, 529 U.S. 473, 484-85
9 (2000).

10 For the reasons set forth in the magistrate judge's
11 February 12, 2009 findings and recommendations, and this court's
12 March 30, 2009 order, jurists of reason would find it debatable
13 whether petitioner's application was properly dismissed.
14 Accordingly, a certificate of appealability should issue in this
15 action.

16 IT IS SO ORDERED.

17 Dated: April 29, 2009



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19 MORRISON C. ENGLAND, JR.
20 UNITED STATES DISTRICT JUDGE
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